

OCT 19 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: OLLIEAN GOBAUD,

Debtor,

EUGENE SCHNEIDER,

Appellant,

v.

OLLIEAN GOBAUD,

Appellee.

No. 04-16993

BAP No. NV-03-01381-SMaMo

MEMORANDUM^{*}

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Smith, Marlar and Montali, Bankruptcy Judges, Presiding

Submitted October 11, 2005^{**}

Before: T.G. NELSON, TALLMAN and BEA, Circuit Judges

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Eugene Schneider appeals pro se from the Bankruptcy Appellate Panel's ("BAP") decision affirming the bankruptcy court's final order denying his motion to extend time to file a notice of appeal in an adversary proceeding in the debtor's bankruptcy case. We have jurisdiction pursuant to 28 U.S.C. § 158(d). On appeal from the BAP, we review the bankruptcy court's conclusions of law de novo and its factual findings for clear error. *Sticka v. Casserino (In re Casserino)*, 379 F.3d 1069, 1072 (9th Cir. 2004). We affirm.

We reject Schneider's contention that he should have received an extension of time to file a notice of appeal because notice of the underlying judgment was mistakenly mailed to his former counsel. *See* Fed. R. Bankr. P. 9022(a) (lack of notice "does not . . . authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002"); Fed. R. Bankr. P. 8002(c) (time to appeal may be extended—upon a showing of excusable neglect—only by motion filed not later than twenty days after the expiration of the time for filing a notice of appeal).

The bankruptcy court did not err in denying Schneider's extension request because, even assuming a showing of excusable neglect, Schneider failed to file his request within Rule 8002(c)'s twenty-day period. *See Slimick v. Silva (In re Slimick)*, 928 F.2d 304, 306 (9th Cir. 1990) ("Although Rule 8002 thus

incorporates some flexibility, we strictly enforce its time provisions.”). We reject Schneider’s contention that Rule 8002 operates to deprive him of due process. *See Delaney v. Alexander (In re Delaney)*, 29 F.3d 516, 518 n.3 (9th Cir. 1994).

AFFIRMED.